parties that no inadvertence on my part should provide grounds for litigation to be needlessly prolonged. For this reason, then, I would reduce my award by 10 per cent again.

This appeal being thus allowed, the cost of 991,730 square feet at $8 would amount to $7,933,840. Deducting $200,000 for squatter clearance leaves a balance of $7,733,840. Deducting again 10 per cent of this figure leaves my net award at the sum of $6,960,456, which works out at $7.09 per square foot. I direct that this sum be paid to the appellants in the proportion of their respective shares, less the amount awarded by the collector in case the same had already been paid.

In accordance with the provisions of section 48 of the Land Acquisition Act, 1960, I further order that interest be paid on the excess figure of $3,985,266 at the rate of 6 per cent per annum from June 26, 1965, the date on which the collector took possession, till date of payment.

As to costs, the order of the learned judge is set aside. By virtue of the provisions of para (c) of section 51(1) of the Act, I would make no order as to costs both here and in the court below.

Raja Azlan Shah and **Pawan Ahmad JJ.** concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; Braddell & Ramani.*

QUEK AH CHIAN v. NG GUAN CHNG

[A.C.J. (Wee Chong Jin C.J.) February 22, 1968]
[Singapore — District Court Appeal No. 19 of 1967]

Family Law — Maintenance — Charge of "cruelty" — Omission to maintain — Women's Charter, 1961, s. 62(1)(c) & (d).

A charge of cruelty under section 62(1)(d) of the Women's Charter raises a serious issue and magistrates must constantly bear in mind that an applicant to succeed under that section must establish acts or conduct on the part of the husband which cause danger to life, limb or health, bodily or mental, or give rise to a reasonable apprehension of such danger. "Cruelty" has the same meaning in law in maintenance proceedings as well as in divorce proceedings under the Women's Charter.

It is necessary that an applicant under section 62 (1)(c) of the Women's Charter must prove not only an omission to maintain her but also that it was a culpable omission. Where the wife refuses to continue to reside in the matrimonial home, there must be acceptable evidence that the acts or conduct of the husband had been of such a character or degree that she was reasonably justified in continuing to live apart from her husband.

Case referred to:—

(1) *Russell* v. *Russell* [1895] P. 315.

DISTRICT COURT APPEAL.

Kumar Lal for the appellant.

S. S. Lee for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This case demonstrates the sad and unhappy consequences that often flow when parents and relatives of two young people, about to be married or just newly married, seek to interfere with their married life and especially when both of them permit themselves to be influenced by such interference, however well-intentioned it may be.

The facts are these. The appellant a school teacher, earning a salary of $1,019.25 a month, after courting the respondent, then employed as a clerk in the same school, for more than four years, married the respondent on the 11th December 1965. Just four months later, on 23rd April 1966 the respondent left the matrimonial home and went back to live with her own parents.

According to the wife the circumstances which led to her leaving the matrimonial home were these. During the wedding celebrations a misunderstanding arose between her parents and her husband. Her husband refused to offer tea to her parents on the wedding day and instead demanded two bowls of rice. Her mother not knowing of this particular custom, put two bowls of rice in two cellophane bags with a "red packet" on top of each bowl. On seeing this, her husband was angry, why we are not told, and scolded her younger sister. Thereupon her mother told her younger sister not to attend the wedding dinner.

After the wedding, the matrimonial home was set up in the home of her husband's parents. During the four months they were living together the wife in her own words was "rather happy" in spite of the fact that her husband refused to allow her to pay visits to her own family and to pay her last respects to her grandmother when the latter died.

On the evening before she left the matrimonial home, her father, younger brother and a woman neighbour of her parents came to visit them. Her father invited the married couple to visit their home as the school holidays were on and also asked her husband to allow her to visit and stay with her parents for a few days. Her husband refused the invitation to visit her parents and also refused to allow her to stay with her parents for a few days although she said she wanted to do so. After the visitors had left, he punched her several time on the lips and face and refused to allow her to sleep on the matrimonial bed and made her sleep on a canvas bed. In the middle of the night he again punched her and told her to leave the house immediately. Again, the next morning he told her to leave the house and never to return. As she kept quiet he slapped her and tried to make her write a statement that she was leaving the house of her own accord. This she refused to write. After her husband had gone out of the house, she also left

after telling her mother-in-law that she was going to her parents' house. Since then she has remained with her parents.

The husband's version was this. Having known each other for four and a half years and being in love with each other they decided to get married and continued with their marriage plans even though there was a misunderstanding with her parents arising out of the engagement. The wife's father had hinted that he should be given between $1,000 to $2,000 on the occasion of the engagement and was unhappy when he was given only $440 by the husband.

Again, on the 4th December 1965, that is seven days before the wedding, his wife's mother took the jewellery he had given to his bride to be and threw it on the table contemptuously. On the wedding day his wife's mother and brother were hostile to him because he would not comply with their requests for money. After the marriage, they made three demands for money and because he would not comply, on each of these three occasions his wife quarrelled with him. His wife at no time asked him if she could visit her parents. The reason why she did not visit her parents after the marriage was because her family were in mourning for her grandmother. The differences he had with his wife arose because of demands made by her parents on him. She was co-operative whenever the parents did not telephone her.

On the evening of the 22nd April 1966, his father-in-law, brother-in-law and a woman came to his house. He did not know the reason for their visit but on greeting them he said they looked hostile. His father-in-law demanded to take his wife home that night but he suggested instead that he would send his wife to her parents' house the following morning as his own mother was spending the night away from home. His father-in-law was angry at this suggestion and told him to stop making excuses. His brother-in-law also joined in the tirade against him and abused and threatened him. The upshot was that he told them they could take his wife with them but he pleaded with her not to go until the following morning. She, however, put some clothes in a box but, as they were all leaving, the woman advised his wife to return to her parents' home the next day and eventually the visitors left and his wife remained.

After they had left, he asked his wife who had invited them to the house and she told him she had rung them up to come. He admonished his wife for not trying to stop her brother from abusing him. His wife called him a coward and dared him to slap her and moved her face close to him. In anger he slapped her twice on the left cheek but they were not hard slaps. That night she slept on the canvas bed of her own accord.

The following morning his mother returned home and gave his wife a word of advice. Soon after he went out and lodged a report with the police. On returning home he discovered that his wife had left the house. He made many efforts for a reconciliation. He tried to contact her by telephone on the 28th and 29th April but could not get through to her. On 1st May he sent his three sisters to ask her to return home. On 7th May he went to the Social Welfare Department and an officer there made arrangements for him to meet his wife there but at the appointed time she failed to appear. On 17th May in a magistrate's court and before the magistrate he asked his wife to return to him. On the 18th May he wrote another letter asking her to return. His solicitors wrote five letters asking for reconciliation. On 29th December 1966 he was again prepared to apologise to his wife in the presence of the magistrate in the 8th Magistrate's Court but she refused in spite of the magistrate's advice. He is still in love with his wife and wants her to return to the matrimonial home.

The other material facts are these. On the 26th April 1966, that is, three days after she left the matrimonial home, the wife was examined by a doctor who testified that she had bruises over the left cheek and upper lip which could have been caused by a punch. She caused criminal proceedings to be instituted against her husband on a charge of voluntarily causing hurt, an offence under the Penal Code, to which charge the husband on the 7th February 1967 pleaded guilty before a magistrate's court. On his plea of guilty he was convicted but granted an absolute discharge.

On 12th April 1967 the wife applied to a magistrate's court in accordance with the procedure laid down by section 69 of the Women's Charter (Ordinance No. 18 of 1961) for maintenance. She laid her formal complaint before the magistrate who acted on that complaint and issued a summons to the husband. This summons specified that the wife had made an application on her own behalf for an order under section 62(1)(c) and (d) of the Women's Charter.

Section 62(1)(c) and (d) provides as follows:—

> "62. (1) Any married woman whose husband —
>
> (c) has neglected to provide reasonable maintenance for her and her children whom he is liable to maintain;
>
> (d) has treated her or any of her children with cruelty;
>
> may apply to a District Court or Magistrate's Court and such court on due proof thereof may order the husband of such married woman to make a monthly allowance for her maintenance in proportion to his means as to the court seems reasonable."

The application for maintenance was heard by the magistrate of the magistrate's court who made an order requiring the husband to pay the

wife the sum of $175 a month with effect from 1st September 1967.

The husband now appeals against the maintenance order on two grounds:—

(1) that the learned magistrate erred in fact and in law in holding that the appellant/defendant treated the respondent/complainant with cruelty.

(2) that the learned magistrate erred in law in holding that the appellant/defendant had neglected to maintain the respondent/complainant.

On the first ground of appeal, counsel for the husband contends, accepting that the magistrate was correct in preferring the wife's evidence to that of the husband, the evidence was not sufficient in law to amount to cruelty within the meaning of section 62(1)(d) of the Women's Charter. His argument is that "cruelty" in that section has the same meaning as "cruelty" in section 84(2)(e) which allows the court to dissolve a marriage on a wife's petition on the ground of cruelty by a husband and that accordingly the degree of cruelty required to justify an order for maintenance in a magistrate's court must be the same as that required in the High Court to pronounce a decree of divorce. The principle, he argues, is well settled that to found a decree of divorce on the ground of cruelty, it must be proved that the husband was guilty of "conduct of such a nature as to cause danger to life, limb, or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger" (see *Russell* v. *Russell* [1]). Counsel for the wife does not dispute, and in my opinion rightly so, that "cruelty" has the same meaning in law in maintenance proceedings as well as in divorce proceedings under the Women's Charter.

It is necessary to stress to magistrates that a charge of cruelty under section 62(1)(d) raises a serious issue and they must constantly bear in mind that an applicant to succeed must establish acts or conduct on the part of the husband which cause danger to her life, limb or health, bodily or mental, or give rise to a reasonable apprehension of such danger.

Unfortunately, nowhere in his grounds of decision has the magistrate in the present maintenance proceedings indicated that he was aware of the proper law to apply on a charge of cruelty. This may be because he arrived at a decision without giving counsel who appeared before him an opportunity to make submissions on the evidence and the law. I have therefore to consider, as an appellate court, and applying the correct legal test, whether the evidence of the wife justifies a finding of cruelty within the meaning of section 62(1)(d).

What then is the wife's evidence before the magistrate? In her examination-in-chief she speaks first of the incidents that took place while her family were in the matrimonial home on the evening of the 22nd April 1966. She then gave evidence of the incidents after they left. Her husband punched her several times on the lips and face, refused to let her sleep on the matrimonial bed and in the middle of the night told her to leave the house immediately and slapped her. The next morning he again told her to leave and never to return, slapped her again, and tried to force her to write a statement that she was leaving of her own free will. In cross-examination she said she was "rather happy" during the four months of the marriage but would not go back to her husband as she did not like him any more. It was only when re-examined that she mentioned she had been "assaulted" previously twice by him. The medical evidence showed she had bruises over the left cheek and upper lip which could have been caused by a punch.

Such then is the totality of the evidence on the question of legal cruelty. Is it sufficient to justify my arriving at a serious finding of cruelty in the legal sense that the husband has by his acts and conduct on the 22nd and 23rd April 1966 caused danger to life, limb or health, bodily or mental of his wife or as to give rise to a reasonable apprehension of such danger. Giving the best possible consideration I can to the evidence I am left with the feeling, deprived as I am of the opportunity of seeing and hearing the parties and the other witnesses, that to hold one way or the other would, in all the circumstances of this particular case, not be just.

I come now to the second ground of appeal. Counsel for the husband contends that there must be proof of culpable omission on the part of the husband to maintain the wife before it can be held under section 62(1)(c) that a husband "has neglected to provide reasonable maintenance for her". It is not enough, counsel argues, to prove merely that at the time of the application the husband has failed to provide reasonable maintenance for her.

The trial magistrate has made no findings on this issue nor has he given any indication in his grounds of decision that he has considered the evidence before him in relation to this issue. In my judgment, it is necessary that an applicant must prove not only an omission to maintain her but also that it was a culpable omission. In other words, where the wife refuses to continue to reside in the matrimonial home, there must be acceptable evidence that the acts or conduct of the husband had been of such a character or degree that she was reasonably justified in continuing to live apart from her husband.

Here again what is the evidence of the wife? In her examination in chief all she said on this issue was that since she left the matrimonial home she has been living with her parents and has no income of her own. In cross-examination

she admits her husband made many attempts at reconciliation but would not go back to her husband because she did not like him any more. Later on she said her husband had been cruel.

On the other hand, the husband testified he wants her and still loves her. He denied his attempts at reconciliation were prompted by the wife's application for maintenance. He admitted he would not give her money if she does not return to live with him.

On all this evidence, is an appellate tribunal, not having the benefit of seeing and hearing the parties, in a position to decide whether there has been a culpable omission on the part of the husband to provide reasonable maintenance for his wife, where the magistrate has made no findings at all? In my judgment, it is not in a position to do so.

For all these reasons, in my judgment the appeal should be allowed and the matter be remitted to another magistrate to be re-tried and I make an order accordingly.

However unsatisfactory the position now is, I hope that the parties will now re-consider the attitudes they have adopted in the past in the light of the fact that they must now recognise that their differences have arisen, not from personal incompatibility, but out of the desire on the part of the husband to be a good son and on the part of the wife to be a good daughter. I hope too that they will now realise that their real responsibility lies, as spouses, in one being a good husband and in the other being a good wife and that the carrying out of this fundamental responsibility is not incompatible with being also a good son and a good daughter. Perhaps, the real solution may be, and they have the means and the ability to do so, in their making a matrimonial home for themselves apart from their respective parents.

Retrial ordered.

Solicitors: *Lee & Lee; S. K. Lee.*

ABDUL SHUKOR v. HOOD MOHAMED

[O.C.J. (Ambrose J.) February 22, 1968]
[Singapore — Suit No. 1949 of 1964]

Contract — Illegal contract — Money had and received — Remittance to India in black market rate — Indian Foreign Exchange Act, 1947 — Action for money had and received — When maintainable.

Conflict of laws — Contract — Enforceability of — Illegal by lex loci solutionis.

This was an action for money had and received by the defendant to the use of the plaintiff. The plaintiff, alleged that he gave the defendant $61,000 on January 8, 1960 shortly before he left for India on the defendant's promise to send the whole of the money to him in India. The plaintiff received only $21,466.56 from the defendant. He claimed the balance, namely, $39,533.44. The allegations in the defence were that on or about the beginning of January, 1960, the plaintiff handed $25,000 to the defendant, and later $6,000, upon a verbal agreement that the defendant should remit the said sums to India illegally in a manner contrary to Indian exchange control laws. The sum of $28,500 was remitted by the defendant to the plaintiff in India. A further sum of $1,500 was paid by the defendant to one *M* at the request of or with the sanction of the plaintiff. Finally a further sum of $1,000 was retained by the defendant with the knowledge of the plaintiff, in repayment of a debt due from the plaintiff to the defendant. It was agreed between the parties that if the defendant should make a profit on the illegal transaction, the defendant should be entitled to retain it. The defendant made a profit of $4,135.

The court had to consider the following questions: (1) whether the plaintiff handed the defendant $61,000 on January 8, 1960; (2) did the plaintiff ask the defendant to send the money, which he handed to the defendant, to him in India at the black market rate of exchange?; (3) how much of the money received by the defendant from the plaintiff remained in the defendant's hand?; (4) whether the contract entered into by the plaintiff and the defendant was illegal by the law of India; (5) whether the contract being illegal by the law of India was enforceable in Singapore, and (6) whether an action could be maintained by the plaintiff for money had and received by the defendant under an illegal contract.

Held: (1) the sum of money handed by the plaintiff to the defendant on January 8, 1960, was only $31,000;

(2) the plaintiff asked the defendant to send the money, which he handed to the defendant, to the plaintiff in India at the black market rate of exchange;

(3) the balance remaining in the hands of the defendants was $7,941.41;

(4) the contract entered into by the plaintiff and the defendant was contrary to section 4(2) of the Indian Foreign Exchange Regulations Act, 1947;

(5) in the present case the *lex loci solutionis* was the law of India as the contract was to be performed in India. The contract was not enforceable in Singapore as it was illegal by the *lex loci solutionis;*

(6) the parties entered into, and the money which the plaintiff sought to recover was paid in pursuance of an illegal contract. An action for money had and received lay for the recovery of money paid in pursuance of an illegal contract, provided it was brought while the contract was still executory or before the illegal purpose had been substantially performed. In the present case the illegal purpose had been substantially performed before the action for money had and received was brought. It was brought too late for the plaintiff to have the assistance of the court. There was a further reason why the court could not assist the plaintiff because the weight of judicial authority has been strongly in favour of the theory that the action for money had and received depends on an imputed promise to pay.

Cases referred to:—

(1) *Ralli Brothers* v. *Compania Naviera Sota Y Aznar* [1920] 2 K.B. 287.

(2) *Mistry Amar Singh* v. *Kulubya* [1941] A.C. 142.

(3) *Sajan Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

(4) *Bowmakers Ltd.* v. *Barnet Instruments Ltd.* [1945] K.B. 65.

(5) *Sinclair* v. *Brougham* [1914] A.C. 398.

(6) *Boissevain* v. *Weil* [1950] A.C. 327.